

ORIGINAL

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DISTRICT COURT OF GUAM
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MARY L.M. MORAN
CLERK OF COURT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in personam*,

Defendants.

Civil No. 06-00011

IN ADMIRALTY

VERIFIED COMPLAINT OF
THE UNITED STATES

Plaintiff, the United States of America alleges upon information and belief as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty and maritime jurisdiction against Defendants
MARWAN SHIPPING & TRADING CO., FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in personam*, as hereinafter more fully appears, and within Rule
9(h) of the Federal Rules of Civil Procedure.

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1 2. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345,
2 33 U.S.C. §§ 1321 and 2717.

3 3. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391 and 1395, and
4 33 U.S.C. § 2717.

5 4. The United States also brings this action on behalf of the Oil Spill Liability
6 Trust Fund (hereafter "Fund"), pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.,
7 to recover any and all removal costs and damages incurred directly by the Fund, any removal costs
8 and damages incurred by the Fund through compensation paid to any claimant, and all costs incurred
9 by the Fund by reason of any such claims, including interest, prejudgment interest, adjudicative
10 costs, and attorney's fees. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2712(f), the United
11 States has acquired by subrogation, or may in the future acquire by subrogation, the rights of any
12 claimant or State paid compensation from the Fund, and the United States specifically reserves the
13 right to amend this Verified Complaint to assert any or all such subrogated rights and claims.

14 5. At all times material herein, Defendant MARWAN SHIPPING & TRADING
15 CO. ("MARWAN") had a place of business in the United Arab Emirates and was doing business in
16 Guam and within this district and within the jurisdiction of this Court, including through ownership
17 and operation of the M/V AJMAN 2 at the time of, and with respect to, the matters sued upon herein.

18 6. At all times material herein, MARWAN owned the M/V AJMAN 2.

19 7. At all times material herein, MARWAN operated the M/V AJMAN 2.

20 8. At all times material herein, MARWAN managed the M/V AJMAN 2.

21 9. At all times material herein, MARWAN chartered the M/V AJMAN 2.

22 10. At all times material herein, MARWAN controlled the M/V AJMAN 2.

23 11. At all times material herein, Defendant FIVE SEAS SHIPPING CO., LLC
24 ("FIVE SEAS") had a place of business in the United Arab Emirates and was doing business in
25 Guam and within this district and within the jurisdiction of this Court, including through ownership,
26 operation, and chartering of the M/V AJMAN 2 at the time of, and with respect to, the matters sued
27 upon herein.
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1 12. At all times material herein, FIVE SEAS was owner *pro hac vice* of the M/V
2 AJMAN 2.

3 13. At all times material herein, FIVE SEAS operated the M/V AJMAN 2.

4 14. At all times material herein, FIVE SEAS managed the M/V AJMAN 2.

5 15. At all times material herein, FIVE SEAS chartered the M/V AJMAN 2.

6 16. At all times material herein, FIVE SEAS controlled the M/V AJMAN 2.

7 17. At all times material herein, and by reason of the matters alleged in this
8 Complaint, Defendants MARWAN and FIVE SEAS were "responsible parties" within the meaning
9 of the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

10 18. At all times material herein, Defendant S.J. GARGRAVE SYNDICATE 2724
11 had a place of business in London, England, and was doing business in the United States and Guam
12 and within this district and within the jurisdiction of this Court, including, but not limited to, by
13 insuring and/or providing evidence of financial responsibility and certain guarantees pertaining to
14 marine oil pollution liabilities incurred by or through the M/V AJMAN 2.

15 19. S.J. GARGRAVE SYNDICATE 2724 has provided evidence of financial
16 responsibility and certain guarantees pertaining to the said vessel pursuant to statute and regulations;
17 accordingly, pursuant to those statutes and regulations, and up to the monetary limits of its statutory
18 and regulatory liability, the United States of America is entitled to bring its claims directly against
19 said guarantor.

20 20. At all times material herein, Defendants MARWAN and FIVE SEAS, in
21 addition to Defendant S.J. GARGRAVE SYNDICATE 2724, the latter solely up to the monetary
22 limits of its statutory and regulatory liability, were agents of each other and are therefore responsible
23 and liable, jointly and severally, for all of each of the others' obligations, acts, omissions, and strict
24 liability with respect to the matters alleged in this Complaint and action.

25 21. In or about August and September, 2004, M/V AJMAN 2, while in the
26 Exclusive Economic Zone, territorial seas, and navigable waters of the United States, posed a
27 substantial threat of pollution to navigable waters of the United States, including the waters of Apra
28 Harbor, Guam, and the resulting substantial threat of pollution to adjoining shorelines. The said

1 substantial threat of pollution included, but was not limited to, the fact that M/V AJMAN 2 grounded
2 at Family Beach, adjacent to Hotel Wharf, in Apra Harbor. The foregoing substantial threat of
3 pollution, including other acts and omissions to be established according to proof at trial, are
4 hereafter referred to as the "OPA Incident", said term "OPA" referring to the Oil Pollution Act of
5 1990, 33 U.S.C. § 2701, *et seq.*

6 22. The OPA Incident was proximately caused, *inter alia*, by the acts, omissions,
7 and strict liability of M/V AJMAN 2, her owners, crew, agents, servants, employees, and others for
8 whom MARWAN and FIVE SEAS were responsible, all within the privity and knowledge of
9 MARWAN and FIVE SEAS.

10 23. As a result of the OPA Incident, and in order to alleviate the substantial
11 threat of pollution caused by M/V AJMAN 2, the United States of America, by and through its
12 various agencies and others acting on its behalf, responded to the OPA Incident and incurred removal
13 costs and damages within the meaning of the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

14 24. The precise amount of removal costs and damages sustained by the United
15 States presently exceeds \$829,051, the exact amount of said removal costs and damages to be
16 established according to proof at the time of trial, plus interest, administrative charges, costs,
17 disbursements, and statutory attorneys' fees.

18 **AS AND FOR A FIRST CAUSE OF ACTION AGAINST**
19 **MARWAN, FIVE SEAS, AND S.J. GARGRAVE SYNDICATE 2724, *IN PERSONAM***
20 **(OIL POLLUTION ACT OF 1990)**

21 25. Plaintiff, United States of America, refers to and incorporates by reference as
22 though fully set forth herein each and every foregoing paragraph of this Complaint.

23 26. Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel
24 from which oil is discharged, or which poses the substantial threat of discharge, into or upon the
25 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is
26 strictly liable for all costs, damages, and/or disbursements specified in the Act.

27 27. Under the circumstances herein, MARWAN, FIVE SEAS, and S.J.
28 GARGRAVE SYNDICATE 2724 are liable to the United States of America, without limitation, for

1 all the aforesaid costs, damages, and/or disbursements sustained by the United States as a result of
2 the OPA Incident.

3 **AS AND FOR A SECOND CAUSE OF ACTION AGAINST MARWAN, FIVE SEAS,**

4 **AND S.J. GARGRAVE SYNDICATE 2724, *IN PERSONAM***

5 **(OIL POLLUTION ACT OF 1990)**

6 28. Plaintiff, United States of America, refers to and incorporates by reference as
7 though fully set forth herein each and every foregoing paragraph of this Complaint.

8 29. Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all
9 rights, claims, and causes of action of claimants to whom it has paid compensation.

10 30. As a result of the OPA Incident, the Fund may incur costs, damages, and/or
11 disbursements by reason of claims for removal costs and damages brought against it under the Oil
12 Pollution Act of 1990.

13 31. Pursuant to the Oil Pollution Act of 1990, MARWAN, FIVE SEAS, and S.J.
14 GARGRAVE SYNDICATE 2724 are liable to the United States of America for all such costs,
15 damages, and/or disbursements which may be sustained by the Fund.

16 32. The aforesaid costs, damages, and/or disbursements of the Fund, as provided
17 in the Oil Pollution Act of 1990, are presently unascertained.

18 WHEREFORE, the United States of America prays as follows:

19 1. That United States of America be granted judgment against Defendants MARWAN,
20 FIVE SEAS, and S.J. GARGRAVE SYNDICATE 2724, *in personam*, pursuant to the verified
21 Complaint of the United States herein;

22 2. That the United States of America be granted declaratory judgment against
23 Defendants MARWAN, FIVE SEAS, and S.J. GARGRAVE SYNDICATE 2724, *in personam*, for
24 pollution removal costs or damages binding on any subsequent action or actions to recover further
25 removal costs or damages, plus interest, costs, disbursements, and attorneys' fees;

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1 3. The United States expressly reserves the right to amend this Complaint to add parties
2 and/or causes of action, as may be necessary;

3 4. For such other relief as the Court deems just and proper in the premises.

4 Dated: March 29, 2006.

PETER KEISLER
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LEONARDO M. RAPADAS
United States Attorney
MIKEL W. SCHWAB, Assistant U.S. Attorney

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11 Of Counsel

12 THOMAS H. VAN HORN
13 National Pollution Funds Center
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14 Attorneys for Plaintiff United States of America
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VERIFICATION

R. MICHAEL UNDERHILL says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: March 29, 2006.



R. MICHAEL UNDERHILL